

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LURETHA O. BIVINS

PLAINTIFF PRO SE

VS.

CIVIL ACTION NO. 1:18-CV-2-LG-RHW

**MISSISSIPPI REGIONAL
HOUSING AUTHORITY VIII**

DEFENDANT

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

COMES NOW, Defendant Mississippi Regional Housing Authority VIII (“MRHA VIII”), by and through counsel, and submits this its Memorandum in Support of its Motion to Strike Plaintiff’s Motion for Reconsideration, and would respectfully show unto the Court as follows:

I. FACTS AND PROCEDURAL HISTORY

Plaintiff filed the current suit, *pro se*, alleging race and age discrimination and retaliation based on MRHA VIII’s failure to hire her. [Doc. 1]. Plaintiff participated in the case management conference conducted on February 28, 2018, and agreed to the provisions of the Case Management Order entered by the Court. [Doc. 7]. The Case Management Order required Plaintiff to execute an appropriate HIPAA-compliant medical authorization and submit to a Rule 35 medical examination. *Id.*

As the case progressed, Plaintiff failed to participate in discovery including not supplementing her discovery responses when ordered by the court to do so [July 27, 2018 Text Only Order]; refusing to execute a HIPAA-compliant release though she received the release on four separate occasions [Doc. 56-1, 56-3, 58-3, 62-1], and refusing to submit to a Rule 35 medical examination ordered by the Court [Doc. 7, 60]. Due to Plaintiff’s refusal to engage in the discovery process and her disregard for the Court’s orders, Plaintiff’s case was dismissed

with prejudice on November 13, 2018. [Doc. 76]. On November 30, 2018, Plaintiff filed a Motion for Reconsideration of her dismissal. In this motion, Plaintiff makes numerous baseless and defamatory claims against MRHA VIII, MRHA VIII's counsel, and the Court. As such, it should be stricken pursuant to Rule 12(f) of the Federal Rules of Civil Procedure.

II. ARGUMENT AND AUTHORITY

Rule 12(f) states that “[t]he court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter.” Plaintiff’s motion is not only redundant and immaterial; it is replete with baseless defamatory claims which should be stricken from the record.

Plaintiff’s motion accuses MRHA VIII and its counsel of offering bribes, befriending judges, and entrapping African Americans. Additionally it accuses the Court of improper conduct in handling the case. Plaintiff has made the same improper and unfounded accusations throughout the case in every single pleading she has filed. These claims are prejudicial to the Court, MRHA VIII, and MRHA VIII’s counsel and are irrelevant to Plaintiff’s claims of discrimination and retaliation. “To succeed on a motion to strike, the movant must show ‘that the allegations being challenged are so unrelated to plaintiff’s claims as to be unworthy of any consideration as a defense and that their presence in the pleading throughout the proceeding will be prejudicial to the moving party.’” *McCullough v. Owens Enterprises, Inc.*, 3:07-CV-527-TSL-JCS, 2008 WL 2374245, *3 (S.D. Miss. June 5, 2008) (quoting *U.S. v. Montelongo*, 3:07-CV-1566-G ECF, 2008 WL 631245, at *1 (N.D. Tex. March 3, 2008)). The allegations directly attack the reputations, competency, and trustworthiness of their targets without providing a single shred of evidence or proof. Plaintiff’s motion is “based on false, erroneous, and/or conclusory allegations which have no basis in fact . . .” [July 27, 2018 Text only order]. As such, Plaintiff’s Motion should be stricken in its entirety.

III. CONCLUSION

For the above and foregoing reasons, Mississippi Regional Housing Authority VIII, respectfully requests this Honorable Court strike Plaintiff's Motion for Reconsideration in its entirety. MRHA VIII respectfully requests any and all other relief to which it is entitled.

Respectfully submitted, this the 6th day of December, 2018.

MISSISSIPPI REGIONAL HOUSING
AUTHORITY VIII

BY: s/Kye C. Handy

Ashley Eley Cannady (MS Bar No. 101253)
Kye C. Handy (MS Bar No. 105048)
BALCH & BINGHAM LLP
188 East Capitol Street, Suite 1400
Jackson, MS 39201
Telephone: (601) 961-9900
Facsimile: (601) 961-4466
acannady@balch.com
khandy@balch.com

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2018, I electronically filed the foregoing with the Clerk of the Court using the ECF system and served Plaintiff Luretha O. Bivins *via* U.S. Mail at:

Luretha O. Bivins
P.O. Box 9261
Moss Point, MS 39562-9261

s/ Kye C. Handy
KYE C. HANDY